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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

SIMONA TANASESCU, Plaintiff and Appellant, v. SIAMAK VAZIRI et al., Defendants and Respondents.	G055578 (Super. Ct. No. 30-2017-00917022) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Michael P. Vicencia, Judge of the Los Angeles County Superior Court, pursuant to AOC Reciprocal Agreement Order R-453-16. Affirmed.

Simona Tanasescu, in pro. per., for Plaintiff and Appellant.

Krane & Smith, Jeremy D. Smith and Joshua A. Najemy for Defendants and Respondents.

* * *

Plaintiff Simona Tanasescu appeals from a judgment of dismissal entered in favor of defendant Siamak Vaziri after the trial court sustained without leave to amend Vaziri's demurrer to the three causes of action Tanasescu alleged against him in the underlying action. Tanasescu filed the complaint against numerous defendants, including her former attorney Vaziri, alleging causes of action arising from the prosecution and settlement of Tanasescu's earlier slip and fall lawsuit against a grocery store. The trial court concluded the three claims stated against Vaziri were time-barred. We affirm.

I

BACKGROUND

A. *The Slip and Fall Lawsuit*

Tanasescu slipped and fell while shopping at a Food 4 Less store on February 6, 2011, fracturing her ankle. On February 8, 2011, Tanasescu retained Vaziri to represent her in pursuing personal injury claims against the Food 4 Less store. Thereafter, according to the complaint underlying this appeal, Vaziri engaged in conduct directly contrary to his duties as her attorney.

Tanasescu alleged Vaziri failed to obtain crucial discovery (contemporaneous photographs of the scene and surveillance video), allowed the wrong corporate entity to defend the case (Ralphs Grocery Company doing business as Food 4 Less, rather than "proper" defendants, the Kroger Co. and Food 4 Less), failed to pursue full recovery of her damages (asking only for economic damages), and nearly allowed the statute of limitations on her personal injury claims to expire before Vaziri finally filed the personal injury complaint on January 22, 2013 (the slip and fall complaint).

Moreover, shortly after Vaziri filed the slip and fall complaint, Vaziri presented Tanasescu with a low-ball $5000 settlement offer from Ralphs Grocery Company (Ralphs), which Vaziri characterized as a "'favor.'" When Tanasescu bristled at the offer and rejected it, Vaziri announced he no longer wanted to represent her in the

action. On March 4, 2013, Vaziri substituted out of the case and Tanasescu was then "forced" to represent herself.

Ultimately, Tanasescu and Ralphs reached a settlement at a mandatory settlement conference in which she agreed to accept $12,000 in exchange for a full release of all claims arising from the slip and fall. When Tanasescu failed to sign the release of her claims within 60 days, as required by the settlement agreement, the trial court granted Ralphs's motion to enforce the settlement (Code Civ. Proc., § 664.6). The court then entered judgment and dismissed the case on September 8, 2014.

Tanasescu appealed from the judgment (the prior appeal). She contended the trial court and its clerical staff made critical errors on law and motion matters that preceded the settlement agreement, contentions this panel rejected as barred by Tanasescu's decision to settle the case. (*Tanasescu v. Ralphs Grocery Company et al.* (Nov. 30, 2015, No. G051032 [nonpub. opn.] (the prior opinion), p. 2.) Tanasescu further argued in the prior appeal that the settlement was void because she did not understand its terms and because she agreed to it under duress, rendering the agreement involuntary. We found no merit to the claims and affirmed the judgment. (*Ibid*.) The California Supreme Court summarily denied Tanasescu's petition for review.

On September 8, 2014, the same day the trial court entered judgment, Tanasescu filed a federal lawsuit against Vaziri and others alleging fraud and deceit and intentional infliction of emotional distress, among other causes of action, based on the prosecution and settlement of the slip and fall case. On January 5, 2016, the Central District dismissed Tanasescu's federal question claims without leave to amend and declined to exercise supplemental jurisdiction over her state law claims. Tanasescu filed a notice of appeal in the 9th Circuit Court of Appeal on October 23, 2015, which that court dismissed on January 6, 2016.

B. *This Action Based on the Prosecution and Settlement of the Slip and Fall Case*

On April 26, 2017, Tanasescu filed the instant action. The 70-page complaint stated nine causes of action and named multiple defendants: Kroger Co. ("for its own actions and the actions of its subsidiaries" Ralphs and Food 4 Less, and of its third party insurance administrator), the State of California ("for the wrongful acts of its Judicial Branch employees," including filing clerks, the two trial court judges who handled the case, the temporary judge who handled the mandatory settlement conference, this appellate panel for affirming the judgment, and "[u]nknown employees of the California Supreme Court" for refusing to grant review of our decision affirming the judgment), the Orange County Superior Court, and her former attorney, Vaziri.

Tanasescu stated three claims against Vaziri: fraud and deceit, breach of contract, and intentional infliction of emotional distress. In the breach of contract cause of action, Tanasescu alleged Vaziri "entered into the [legal services] contract with no intent of performing on his duty of care," "failed to investigate and preserve the critical evidence in the photographs and in-store surveillance recordings of the incident," "refrained from presenting the opposition with a properly prepared demand letter," failed "to proceed with [a] civil action . . . when the defense denied Tanasescu's claims, and ultimately abandoned Tanasescu when she asked him to pursue the personal injury claims in the civil action he filed on her behalf as of [January 22,] 2013."

In her claim for intentional infliction of emotional distress, Tanasescu widened her description of Vaziri's misconduct, alleging Vaziri, Kroger Co., and its third party insurance administrator engaged "in a prohibited trade practice in the business of insurance" and together "connive[ed] to prevent Tanasescu from obtaining redress on her injury claims." She further alleged Vaziri "induced Tanasescu into retaining him for his legal expertise when he had no intention of performing on his duty of care," but instead intended "to injure Tanasescu's position" in the litigation; Vaziri "refrained from assisting Tanasescu with getting financial help from the insured party [supermarket] as

she began treatment for the [slip and fall] injuries." Tanasescu repeated her allegation Vaziri failed to "conduct a proper fact finding investigation" or preserve "critical evidence," and alleged that "[w]hen [] Vaziri could not finalize his goal of depriving Tanasescu of her right to pursue her claims in court through expiration of the statute of limitation, he plainly abandoned [her] leaving her to proceed in pro-per . . . ."

As for the emotional distress she experienced due to Vaziri's misconduct, Tansescu alleged she was "subjected to undue procedural and financial burdens in having to research the law, review the case and the actions and inactions of defendant Vaziri, and prepare court papers during free time and sleepless nights . . . ." She complained of suffering "additional anxiety and grief as she was uncovering the scheme by her own attorney" to deny her recovery on her injuries.

In the fraud cause of action, Tanesescu alleged Vaziri duped her into retaining him to pursue recovery for her slip and fall injuries while he "had no intent [to represent] her interests" and instead conspired with the supermarket defendants to thwart her "valid claims." She alleged "he misled her all along into believing he was acting on his duty of care when in fact he was a sellout[.]"

Tanasescu alleged Vaziri commited a slew of "fraudulent acts to injure Tanasescu's position" in pursuing recovery. In addition to Vaziri's "deliberate[]" failure to investigate and preserve evidence, Tanasescu accused Vaziri of "keeping Tanasescu's claims in a standstill" by failing to submit "a properly prepared Demand Letter," withholding from Tanasescu the fact that Kroger Co. denied her claims on May 23, 2011, failing to proceed with filing a lawsuit after that denial, and "misleading Tanasescu that he was working on her case [] while he was just letting the 2-year statute for filing a personal injury claim, lapse[.]" Tanasescu cited as a final fraudulent act Vaziri's withdrawal from the representation when she refused to accept the $5000 settlement offer.

C. *Vaziri's Demurrer*

Vaziri demurred to the complaint, contending each of the three claims stated against him failed to state sufficient facts to constitute a cause of action and was time-barred. Vaziri contended both the breach of contract and intentional infliction of emotional distress claims sounded in legal malpractice and were therefore time-barred under the one-year malpractice statute of limitations. (Code Civ. Proc., § 340.6, subd. (a); all further statutory references are to the Code Civ. Proc., unless otherwise indicated.) As for the fraud and deceit claim, Vaziri argued the applicable three-year statute of limitations barred that claim. (§ 338, subd. (d).)

Tanasescu opposed the demurrer on the merits, but also on procedural grounds. She argued Vasiri set the hearing on an improperly abbreviated schedule: Vaziri filed the demurrer on July 24, 2017, and set the hearing for August 15, just 22 days later. Tanasescu argued the hearing was "too early" in violation of California Rules of Court, rule 3.1320(d).

The trial court sustained Vaziri's demurrer without leave to amend, finding all three claims time-barred. The court concluded "an amended complaint would not cure the problem[.]"

II

DISCUSSION

A. *Standard of Review*

In conducting our de novo review of the trial court's order sustaining Vaziri's demurrer, we must "give[] the complaint a reasonable interpretation, and treat[] the demurrer as admitting all material facts properly pleaded. [Citation.]" (*Aubry v. Tri-City Hospital Dist*. (1992) 2 Cal.4th 962, 967.) We do "not, however, assume the truth of contentions, deductions or conclusions of law. [Citation.] The judgment must be affirmed 'if any one of the several grounds of demurrer is well taken. [Citations.]' [Citation.] However, it is error for a trial court to sustain a demurrer when

the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment. [Citation.]" (*Ibid.*)

B. *The Trial Court Properly Sustained the Demurrer to All Three Causes of Action*

Tanasescu contends the trial court erred in ruling her three claims against Vaziri were time-barred. Tanasescu accurately summarizes the procedural background of the case and her allegations against Vaziri, but she falters, in setting forth coherent legal arguments for trial court error.

Tanasescu's central assertion is that the trial court should have applied to her breach of contract and intentional infliction of emotional distress claims the four-year statute of limitations "applicable generally to claims based on a written contract." (§ 337.) She contends the court erred by instead applying to both claims the one-year statute of limitations for attorney malpractice (§ 340.6, subd. (a)).[1]

It is easy to understand why Tanasescu wants the four-year limitations period of section 337 to apply: She dates her discovery of Vaziri's wrongs to "May 6, 2013, when Vaziri mailed Tanasescu her entire case file," making her April 26, 2017 filing of the complaint — just within four years of claim accrual — timely under that statute. Motivation aside, however, Tanasescu offers no persuasive explanation for why the four-year limitations period should apply. The argument flies in the face of the plain language of section 340.6, subdivision (a), which mandates a one-year limitations period for any "action against an attorney for a wrongful act or omission . . . arising in the

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[1] Section 340.6 provides in pertinent part as follows: "An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first. . . ." (§ 340.6, subd. (a).)

performance of professional services," with a single exception for "actual fraud[.]" (§ 340.6, subd. (a).)

Case law makes clear how broadly this attorney malpractice statute of limitations sweeps. In *Stoll v. Superior Court* (1992) 9 Cal.App.4th 1362 (*Stoll*), the court explained the Legislature's explicit purpose in enacting the restrictive one-year statute of limitations for attorney malpractice actions in 1977: "The Legislature intended to enact a comprehensive, more restrictive statute of limitations for practicing attorneys facing malpractice claims. The limitation of one year was designed to counteract the potential of lengthy periods of potential liability wrought by the adoption of the discovery rule, and thereby reduce the costs of malpractice insurance. The only limitation of the one-year period was for actual fraud." (*Id.* at p. 1368.) Consequently, "the Legislature intended to apply the one-year limitations period to both tortious and contractual instances of legal malpractice[.]" (*Ibid.*; see also *Austin v. Medicis* (2018) 21 Cal.App.5th 577, 586 ["While the statute plainly applies to malpractice claims, it also governs 'claims whose merits necessarily depend on proof that an attorney violated a professional obligation in the course of providing professional services," such as fiduciary obligations, obligation to perform competently, obligation to perform services contemplated in legal services contract, and obligation to follow State Bar ethical rules].)

Demonstrating a creative flair, Tanasescu sidesteps the explicitly broad sweep of section 340.6, subdivision (a), and tries to wriggle her breach of contract claim into the narrow exception for "actual fraud." She asserts in her briefs: "[T]he shorter statute of limitation[s] for legal malpractice actions in [] § 340.6 [] applies to 'an action against an attorney for a wrongful act or omission, *other than for actual fraud*, arising in the performance of professional services.'" Because "Vaziri committed in fact *actual fraud* and deceit when breaching the contract[,] . . . this section [§ 340.6, subd. (a)] is not applicable due to the 'actual fraud' exception." (Italics added.)

In other words, Tanasescu contends her breach of contract claim is not subject to section 340.6's short limitations period because Vaziri's breach of contract was not an ordinary breach of contract; its execution involved "actual fraud." Thus, Tanasescu's attempts to avoid the comprehensive scope of section 340.6 by creating a new, hybrid cause of action: She characterizes her cause of action against Vaziri as "the breach of contract through fraud claim," repeatedly referring to Vaziri's misconduct as "the breach of contract through fraud."

The argument is, of course, disingenuous. On the one hand, Tanasescu tries to evade the one-year statute of limitations in section 340.6 by arguing a "breach of contract through fraud claim" falls within the statute's "actual fraud" exception; on the other hand, she argues section 337's four-year statute of limitations for actions on a written contract applies to her claim because it is a simple breach of contract claim.

Bringing the mental gymnastics to an end, we see Tanasescu's breach of contract claim for what it is: "an action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services." (§ 340.6, subd. (a).) As such, it is subject to the one-year limitations period for attorney malpractice. Importantly, Tanasescu concedes her "breach of contract through fraud" claim accrued on May 6, 2013, "when Vaziri mailed Tanasescu her entire file which gave [her] reason to discover that Vaziri acted in breach of contract from the beginning" of the representation. Consequently, the one-year statutory period under section 340.6 expired on May 6, 2014, long before Tanasescu filed the complaint in April 2017.

Tanasescu's cause of action for intentional infliction of emotional distress suffers the same fate because it is "an action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services." (§ 340.6, subd. (a).) In her opposition to the demurrer, Tanasescu conceded "[t]he accrual" of her emotional distress claim "started on [March 4,] 2013 when . . . Vaziri abandoned" her, forcing her to proceed in pro per. Setting aside the question of whether

the harm alleged ("undue procedural and financial burdens," sleepless nights, "additional anxiety and grief") constitutes the "severe emotional distress" required to state the claim (see *Kiseskey v. Carpenters' Trust for So. California* (1983) 144 Cal.App.3d 222, 231), the one-year limitations period under section 340.6, subdivision (a), ran on Tanasescu's emotional distress claim on March 4, 2014, more than three years before she filed the complaint.[2]

As for her fraud claim, Tanasescu makes no explicit argument for finding the trial court erred in ruling this claim was time-barred. Despite the lengthy discussion of Vaziri's alleged fraud in her opening brief, Tanasescu seems to have abandoned hope for the fraud claim by the brief's end, asking in the concluding section only for reversal of the judgment so she can "proceed with the action against Vaziri on the Breach of Contract [claim] and [intentional infliction of emotional distress claim]." Under the circumstances, her apparent abandonment of the legal challenge to the fraud ruling was wise.

The three-year limitations period set forth in section 338, subdivision (d), applies to claims of fraud.[3] The claim accrues upon discovery of the facts constituting the deceit. (§ 338, subd. (d); *Moreno v. Sanchez* (2003) 106 Cal.App.4th 1415, 1423.) Tanasescu clearly admits she "began to uncover" Vaziri's fraud "upon receiving her

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[2] Even if section 340.6 did not apply, Tanasescu's claim for infliction of emotional distress claim would be untimely under the two-year statute of limitations applicable to personal injury claims. (*Unruh-Haxton v. Regents of University of California* (2008) 162 Cal.App.4th 343, 357 [two-year statute of limitations under § 335.1 applies to claims for intentional infliction of emotional distress].)

[3] Section 338, subdivision (d), provides that a three-year limitations period applies to: "An action for relief on the ground of fraud or mistake. The cause of action in that case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake."

entire case file mailed by Vaziri on May 6, 2013."[4] Consequently, the statutory period for filing a fraud claim against Vaziri ran on May 6, 2016, nearly a year before Tanasescu filed the complaint.

We conclude the trial court properly sustained Vaziri's demurrer to all the causes of action against him.

C. *The Hearing Date Complied With the Applicable Rule of Court*

Tanasescu contends the trial court should have overruled the demurrer as procedurally improper, arguing it was set "too early" in violation of California Rules of Court, rule 3.1320(d). The argument lacks merit.

Rule 3.1320 states: "Demurrers must be set for hearing not more than 35 days following the filing of the demurrer or on the first date available to the court thereafter. For good cause shown, the court may order the hearing held on an earlier or later day on notice prescribed by the court."

Vaziri filed his demurrer on July 24, 2017, and set the hearing for August 15, 22 days later. Tanasescu contends the hearing date was improper because it was set *less than* 35 days following the filing of the demurrer. She cites no authority for this strained reading of the rule. Its plain meaning is that the hearing date cannot be set *later* than 35 days after the demurrer is filed; the rule sets no minimum notice period for the hearing.

The minimum notice period for the hearing on the demurrer is governed by Rule 3.1300(a), which states: "Unless otherwise ordered or specifically provided by law, all moving and supporting papers must be served and filed in accordance with Code of

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[4] In her reply brief, Tanasescu repeatedly identifies May 6, 2013, as the date she discovered Vaziri's "actual fraud." Here is one example of this concession: "Tanasescu had reason to discover or should have discovered the actual fraud [] Vazirir used to act in breach of the contract [] at the earliest on May 6, 2013[,] when Vaziri mailed her entire case file which revealed the actual frauds in breach of the contract."

Civil Procedure section 1005 and, when applicable, the statutes and rules providing for electronic filing and service."

The referenced statutory notice requirement is as follows: "Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 16 court days before the hearing. . . . [I]f the notice is served by mail, the required 16-day period of notice before the hearing shall be increased by five calendar days if the place of mailing and the place of address are within the State of California[.]" (§ 1005, subd. (b).)

Tanasescu does not contend she was given less than the required 21-day notice of the hearing on the demurrer. Consequently, Vaziri complied with the statutory notice requirement. More to the point, Vaziri complied with the specific hearing deadline set forth in rule 3.1320(d): The matter was set for hearing well within the requisite time frame of "not more than 35 days following the filing of the demurrer[.]" Tanasescu's procedural challenge to the demurrer fails.

III

DISPOSITION

The judgment of dismissal is affirmed. Respondents are entitled to costs on appeal.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

IKOLA, J.